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Europäisches  
Patentamt

Zweigstelle  
in Den Haag  
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Patent Office

Branch at  
The Hague  
Search  
division

Office européen  
des brevets

Département à  
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Datum/Date

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Zeichen/Ref./Réf.

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Anmeldung Nr./Application No./Demande n°/Patent Nr./Patent No./Brevet n°.

03256868.5-2114-

Anmelder/Applicant/Demandeur/Patentinhaber/Proprietor/Titulaire

LODERS CROKLAAN B.V.

## COMMUNICATION

The European Patent Office herewith transmits as an enclosure the European search report for the above-mentioned European patent application.

If applicable, copies of the documents cited in the European search report are attached.

☒ Additional set(s) of copies of the documents cited in the European search report is (are) enclosed as well.

The following specifications given by the applicant have been approved by the Search Division:

☒ abstract

☐ title

☐ The abstract was modified by the Search Division and the definitive text is attached to this communication.

The following figure will be published together with the abstract:

1

## REFUND OF THE SEARCH FEE

If applicable under Article 10 Rules relating to fees, a separate communication from the Receiving Section on the refund of the search fee will be sent later.





European Patent  
Office

## PARTIAL EUROPEAN SEARCH REPORT

Application Number

which under Rule 45 of the European Patent Convention shall be considered, for the purposes of subsequent proceedings, as the European search report

EP 03 25 6868

DOCUMENTS CONSIDERED TO BE RELEVANT			
Category	Citation of document with indication, where appropriate, of relevant passages	Relevant to claim	CLASSIFICATION OF THE APPLICATION (Int.Cl.7)
X	US 5 607 971 A (AL-MAHMOUD MOHSEN ET AL) 4 March 1997 (1997-03-04)	1-8,17, 23,24	A23L1/015 A61K35/78
Y	* column 2, line 60 - column 3, line 3 *  * column 5, line 45 - column 10, line 38 * * column 15, line 55 - line 64 * ---	9-16, 18-22	A23C9/00
X	US 5 466 453 A (UCHIDA YUKIO ET AL) 14 November 1995 (1995-11-14)	20,21	
Y	* column 1, line 15 - column 3, line 2; example 8 * * column 5, line 25 - line 62 * ---	9-16, 18-22	
X	US 5 690 984 A (LIM JUNG GEUN) 25 November 1997 (1997-11-25)	1-8,20, 21	
	* column 1, line 20 - column 3, line 9; examples *		
X	US 187 802 A (BANG H J ) 1877 * the whole document * ---	1-7,17	
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			TECHNICAL FIELDS SEARCHED (Int.Cl.7)
			A23L A61K A23C
INCOMPLETE SEARCH			
<p>The Search Division considers that the present application, or one or more of its claims, does/do not comply with the EPC to such an extent that a meaningful search into the state of the art cannot be carried out, or can only be carried out partially, for these claims.</p> <p>Claims searched completely :</p> <p>Claims searched incompletely :</p> <p>Claims not searched :</p> <p>Reason for the limitation of the search: see sheet C</p>			
Place of search MUNICH		Date of completion of the search 3 March 2004	Examiner Rinaldi, F
CATEGORY OF CITED DOCUMENTS		T : theory or principle underlying the invention E : earlier patent document, but published on, or after the filing date D : document cited in the application L : document cited for other reasons	
X : particularly relevant if taken alone Y : particularly relevant if combined with another document of the same category A : technological background O : non-written disclosure P : intermediate document		& : member of the same patent family, corresponding document	



DOCUMENTS CONSIDERED TO BE RELEVANT			CLASSIFICATION OF THE APPLICATION (Int.Cl.7)
Category	Citation of document with indication, where appropriate, of relevant passages	Relevant to claim	
X	US 6 254 858 B1 (SHIM HO CHIN) 3 July 2001 (2001-07-03) * column 1, line 15 - column 2, line 47; examples *	1-7,17	
A	WO 02 101025 A (KWON JAY YUNE ;KOREA BIOTECH CORP (KR); VLADIMIR BAKHAREV A (RU)) 19 December 2002 (2002-12-19) * claim 8 *	9-16	
X	DATABASE FSTA 'Online! INTERNATIONAL FOOD INFORMATION SERVICE (IFIS), FRANKFURT/MAIN, DE; KEUN-YOUNG KIM ET AL: "Flavour compounds of pine sprout tea and pine needle tea." Database accession no. 2000-00-h1735 XP002272258 * abstract * & JOURNAL OF AGRICULTURAL AND FOOD CHEMISTRY 48 (4) 1269-1272 2000 CORRESPONDENCE (REPRINT) ADDRESS, HEE-JONG CHUNG, DEP. OF FOOD SCI. & TECH., COLL. OF AGRIC., CHONNAM NAT. UNIV., BUK-GU, KWANGJU 500-757, KOREA. TEL. +82 62 530 2144. FAX +82 62 530 21,  --- -/--	20,21	
			TECHNICAL FIELDS SEARCHED (Int.Cl.7)



DOCUMENTS CONSIDERED TO BE RELEVANT			CLASSIFICATION OF THE APPLICATION (Int.Cl.7)
Category	Citation of document with indication, where appropriate, of relevant passages	Relevant to claim	
X	DATABASE FSTA 'Online! INTERNATIONAL FOOD INFORMATION SERVICE (IFIS), FRANKFURT/MAIN, DE; EUN-JU KIM ET AL: "Bread properties utilizing extracts of pine needle according to preparation method." Database accession no. 2000-00-m0004 XP002272259 * abstract * & KOREAN JOURNAL OF FOOD SCIENCE AND TECHNOLOGY 30 (3) 542-547 1998 FAC. OF LIFE RESOURCES SCI., KYUNG-SAN UNIV., KYUNG-SAN, KYUNGBUK 712-240, KOREA,	20,21	
	---		TECHNICAL FIELDS SEARCHED (Int.Cl.7)
X	DATABASE FSTA 'Online! INTERNATIONAL FOOD INFORMATION SERVICE (IFIS), FRANKFURT/MAIN, DE; YOUNG-AE OH ET AL: "Effect of addition of water extract of pine needle on tissue of kimchi." Database accession no. 1999-00-j0385 XP002272260 * abstract * & JOURNAL OF THE KOREAN SOCIETY OF FOOD SCIENCE AND NUTRITION 27 (3) 461-470 1998 CORRESPONDENCE (REPRINT) ADDRESS, SOON-DONG KIM, DEP. OF FOOD SCI. & TECH., CATHOLIC UNIV. OF TAEGU-HYOSUNG, KYUNGSAN 713-702, KOREA,	20,21	
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DOCUMENTS CONSIDERED TO BE RELEVANT			CLASSIFICATION OF THE APPLICATION (Int.Cl.7)
Category	Citation of document with indication, where appropriate, of relevant passages	Relevant to claim	
X	DATABASE FSTA 'Online! INTERNATIONAL FOOD INFORMATION SERVICE (IFIS), FRANKFURT/MAIN, DE; ANONYMOUS: "Husten- und Kräuterbonbons - Rezepte für Massen und Füllungen." Database accession no. 81-1-05-10344 XP002272261 * abstract * & ZUCKER- UND SÜSSWARENWIRTSCHAFT 1980, vol. 33, no. 7/8, pages 251-252, -----	20,21	
			TECHNICAL FIELDS SEARCHED (Int.Cl.7)



The Search Division considers that the present European patent application does not comply with the requirements of unity of invention and relates to several inventions or groups of inventions, namely:

1. Claims: 1-19,22(part),23-24

use of pine needle extract with less than 0.01% of  
isocupressic acid and according pine needle extract as such

2. Claims: 20,21,22(part)

use of pine needle extract



Although claims 19 and 22 are directed to a method of treatment of the human/animal body (Article 52(4) EPC), the search has been carried out and based on the alleged effects of the compound/composition.

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Claim(s) searched completely:  
1-18,20,21,23-24

Claim(s) searched incompletely:  
19,22

Reason for the limitation of the search (non-patentable invention(s)):

Article 52 (4) EPC - Method for treatment of the human or animal body by therapy



### CLAIMS INCURRING FEES

The present European patent application comprised at the time of filing more than ten claims.

- ☐ Only part of the claims have been paid within the prescribed time limit. The present European search report has been drawn up for the first ten claims and for those claims for which claims fees have been paid, namely claim(s):
- ☐ No claims fees have been paid within the prescribed time limit. The present European search report has been drawn up for the first ten claims.

### LACK OF UNITY OF INVENTION

The Search Division considers that the present European patent application does not comply with the requirements of unity of invention and relates to several inventions or groups of inventions, namely:

see sheet B

- ☐ All further search fees have been paid within the fixed time limit. The present European search report has been drawn up for all claims.
- ☒ As all searchable claims could be searched without effort justifying an additional fee, the Search Division did not invite payment of any additional fee.
- ☐ Only part of the further search fees have been paid within the fixed time limit. The present European search report has been drawn up for those parts of the European patent application which relate to the inventions in respect of which search fees have been paid, namely claims:
- ☐ None of the further search fees have been paid within the fixed time limit. The present European search report has been drawn up for those parts of the European patent application which relate to the invention first mentioned in the claims, namely claims:



**ANNEX TO THE EUROPEAN SEARCH REPORT  
ON EUROPEAN PATENT APPLICATION NO.**

EP 03 25 6868

This annex lists the patent family members relating to the patent documents cited in the above-mentioned European search report.  
The members are as contained in the European Patent Office EDP file on  
The European Patent Office is in no way liable for these particulars which are merely given for the purpose of information.

03-03-2004

Patent document cited in search report		Publication date	Patent family member(s)	Publication date
US 5607971	A	04-03-1997	NONE	
US 5466453	A	14-11-1995	CN 1081844 A ,B DE 69312547 D1 DE 69312547 T2 EP 0565313 A2 HK 1000338 A1 JP 3203572 B2 JP 6009419 A KR 268401 B1	16-02-1994 04-09-1997 08-01-1998 13-10-1993 27-02-1998 27-08-2001 18-01-1994 16-10-2000
US 5690984	A	25-11-1997	JP 9047267 A	18-02-1997
US 187802	A		NONE	
US 6254858	B1	03-07-2001	KR 258419 B1 CA 2250528 A1 DE 19850516 A1 FR 2771288 A1 GB 2334444 A ,B JP 2981470 B2 JP 11217317 A	01-07-2000 03-05-1999 06-05-1999 28-05-1999 25-08-1999 22-11-1999 10-08-1999
WO 02101025	A	19-12-2002	KR 2001079073 A WO 02101025 A1 KR 2002095101 A	22-08-2001 19-12-2002 20-12-2002



This application is covered by the extended European search report pilot project at present running within the European Patent Office, applied to all European patent applications filed as first filing and searched on or after 01.07.03. Under this project the EPO issues together with the search report an opinion on whether the application and the invention to which it relates meet the requirements of the EPC. This non-binding opinion is issued free of charge as a service. This opinion may be used as the basis for an informed decision as to whether it is desired to pursue the application further or not.

For further details of this pilot project, the applicant's attention is directed to the Official Journal edition 5/2003. If any further immediate questions or comments arise the EPO Customer Services: +31-70-340 4500 or +49-89-2399 2828 can be contacted.

**The attached opinion reveals that the application or the invention to which it relates appear not to meet the requirements of the Convention** (see comments on enclosed Form 2906).

If the applicant wishes to continue with this application the examination fee must be paid. Where appropriate amendments can be filed to address the objections raised in the opinion, thus shortening the overall procedure. If no amendments are filed, the opinion will be re-issued as the first official communication under Article 96(2) and Rule 51(2) EPC.

If the examination fee has already been paid and the right to the communication under Article 96(1) EPC has been waived for this application, the first official communication under Article 96(2) and Rule 51(2) EPC will be issued promptly.



The examination is being carried out on the **following application documents**:

Text for the Contracting States:

AT BE BG CH CY CZ DE DK EE ES FI FR GB GR HU IE IT LU MC NL PT RO SE SI SK TR LI

**Description, pages:**

1-12 as originally filed

**Claims, No.:**

1-24 as originally filed

**Drawings, sheets:**

1/1 as originally filed

**Cited prior art**

1 The following documents are referred to in this communication; the numbering will be adhered to in the rest of the procedure:

D1: US-A-5 607 971 (AL-MAHMOUD MOHSEN ET AL) 4 March 1997 (1997-03-04)

D2: US-A-5 466 453 (UCHIDA YUKIO ET AL) 14 November 1995 (1995-11-14)

D3: US-A-5 690 984 (LIM JUNG GEUN) 25 November 1997 (1997-11-25)

D4: US 187 802 A (BANG H J ) 1877

D5: US-B-6 254 8581 (SHIM HO CHIN) 3 July 2001 (2001-07-03)

**Art.52(4) EPC**

2 Pursuant to Art. 52(1) and (4) EPC, the subject-matter of claims 19 and 22 is explicitly excluded from patentability (see also Guidelines C IV-4.2 and 4.3). There



is no non-medical treatment of hypertension. All administration foreseen to lower blood pressure will be considered as a medical applications.

### Unity

3 The present application lacks unity within the meaning of Art.82 EPC.

3.1 The following separate inventions or groups of inventions are not so linked as to form a single general inventive concept:

- invention 1 use of pine needle extract having less than 0.01% isocupressic acid and pine needle extract having less than 0.01% isocupressic acid (claims 1-19, 22 (part) and 23-24)

- invention 2 use of pine needle extract (20,21,22 (part))

3.2 The common concept linking together the two inventions (use of pine needle extract) is neither novel in view of the prior art cited in the search report.

3.3 The Applicant is reminded that each and every use mentioned in claims 20 and 21 is regarded as a separate invention. As a matter of fact, use of pine needle extract for different purposes is already known in the art.

3.4 The Applicant is asked to state upon which invention or group of inventions further prosecution of the application should be based and to limit the application accordingly. The other invention or group of inventions is to be excised from the claims and description.

3.5 The subject-matter to be excised may be made the subject of one or more divisional applications. The divisional applications must be filed directly at the European Patent Office in Munich or its branch at The Hague and in the language of the proceedings relating to the present application, cf. Article 76(1) and Rule 4 EPC. The time limit for filing divisional applications (Rule 25(1) EPC) must be observed.

3.6 The following considerations relative to the first invention are made for reasons of completeness only.

### Art.84 EPC

4 The following clarity deficiencies were noted (Art. 84 EPC).

4.1 The expression "isocupressic acid compounds" has no well-recognized meaning in the art and is not suitable for delimiting the exact scope of said claim (see also Guidelines III-4.5). At present, said expression is interpreted as isocupressic acid. Applicant should incorporate into claim 1 the compounds given on p.5 I.3-4



- 4.2 The subject-matter of claim 3 and 4 is formulated as a result to be achieved, and is not in agreement with Guideline C III-4.7. It is not clear what compounds A and B are meant to be.
- 4.3 The expression "unstabilised" (claim 13) is unclear (Guidelines C III-4.7a and 4.10). The definition given on p.9 I.2-5 should be incorporated into the wording of the claims.
- 4.4 The subject-matter of claim 16 is formulated as a result to be achieved, and is not in agreement with Guideline C III-4.7.
- 5 The set of claim presently on file does not fulfill the requirements of R.29(2).

### Novelty

- 6 The subject-matter of
- independent products claim 1 and 8,
  - independent first medical use claim 17
  - independent second medical use claim 18
  - independent process claim 23
- does not fulfil the requirements of Art. 52(1) and Art.54(1) and (2) EPC. The subject-matter of claim 17 does not fulfill the requirements of Art.54 (5) EPC.
- 6.1 D1 discloses a pine needle extract which has been chromatographically purified from isocupressic acid and a medical use thereof (col.2 I.60-col.3 I.3; col.5 I.45-col.10 I.38 and col.15 I.55-64). This anticipates the subject-matter of independent claims 1, 8, 17 and 23.
- 6.2 D2 discloses compositions comprising pine needle extracts for use against hypertension (col.1 I.15-col.3 I.2). Example 8 discloses ice cream compositions comprising pine needle extracts (see also col.5 I.25-62).
- 6.3 D3 discloses beverages with enhanced taste made from pine needles extract containing bioactive agents, among others minerals and tannins, whereby the extract is a water extract (Examples; col.1 I.20-col.3 I.9). It is submitted that the terpene isocupressic acid is not present in the extract of D3. Said disclosure anticipates the subject-matter of claims 1 and 8.
- 6.4 D4 discloses disinfection compositions made from pine needles extract obtainable from steam distillation. It is submitted that the organic acid isocupressic acid cannot be distilled by steam distillation. Said disclosure anticipates the subject-matter of claims 1 and 17.



- 6.5 D5 discloses medical compositions containing pine needle water extract. It is submitted that isocupressic acid is not present in the extract of D5 (col.1 l.15-col.2 l.47; Examples). Said disclosure anticipates the subject-matter of claims 1 and 17.

### Inventive step

- 7 In view of the divulgation of D1 and D2 (see above) the subject-matter of present claims 9-16 and 18, 19 and 22 is obvious. The subject-matter disclosed in the depending claims appears to be trivial to the one skilled in the art and does not justify acknowledgement of an inventive step (Art.56 EPC). According to the established Case Law of the Boards of Appeal, the introduction of additional features in the independent claim will make the subject-matter of said claims **novel and inventive** only in those cases in which said features have an unknown or unexpected effect or contribution to the **solution** of the objective technical problem. The Applicant can demonstrate this most easily by means of comparative examples, wherein the closest state of the art is compared with compositions of the present invention. The Examining Division appreciates substantive and technical information rather than mere assertions.

### Further proceedings

- 8 In case amendments are filed, the Applicant is reminded that a European patent application may not be amended in such a way that it contains subject-matter which extends beyond the content of the application as filed (Art.123(2) EPC).
- 8.1 Any information the Applicant may wish to submit concerning the subject-matter of the invention and for which there is no basis in the application as filed, should be confined to the letter of reply.
- 8.2 Additionally the Applicant is requested to clearly point out on one of the new copies filed or on additional copies of the original pages the amendments which have been made, and where in the application as filed the basis for such amendments can be found (see also Guidelines E-II, 1) in order to verify that the requirements of Art. 123(2) EPC have been fulfilled.
- 8.3 The attention of the Applicant is drawn to the fact that omitting of technical features from the claims or from the description can lead to a broader scope of the claim. Technical features which are not suitable as distinguishing features (vis-à-vis the prior art) are, in most cases, nevertheless limiting features (as far as the originally filed disclosure, and thus Art.123(2) EPC, is concerned) and may



Bescheid/Protokoll (Anlage)

Communication/Minutes (Annex)

Notification/Procès-verbal (Annexe)

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5

Anmelde-Nr.:  
Application No.: 03 256 868.5  
Demande n°:

therefore not be deleted unless a valid basis for such amendment is provided.  
**This consideration is especially valid for unclear subject-matter.**